

Part 290. COVID-19 CAPITAL COSTS TAX CREDIT PROGRAM

§ 290.1 Purpose and general description

The purpose of these regulations is to set forth the administrative process governing the COVID-19 Capital Costs Tax Credit Program (the “Program”) and specifically to establish an application process, standards for evaluation of applications by the Department of Economic Development (the “Department”), and procedures by which small businesses may claim tax credits under the Program. Chapter 59 of the Laws of 2022 establishes the Program and grants the Commissioner of the Department the authority to promulgate regulations to establish procedures for the allocation of the COVID-19 Capital Costs Tax Credit.

§ 290.2 Definitions

For the purposes of this article:

a. “Authorized Applicant” means a business entity that: 1) is operating in New York State; 2) has submitted a preliminary authorization form as described in Section 290.3(a) herein; and 3) has been found not to owe past due state taxes unless the business entity is making payments and complying with an approved binding payment agreement entered into with the taxing authority.

b. “Business entity” shall mean a sole proprietor, partnership, limited liability company, or a corporation (C-Corp or S-Corp) with its own federal employer identification number (FEIN), or in the case of a sole proprietor, a social security number.

c. “Certificate of tax credit” means the document issued to a business entity by the Department after the Department has verified that the business entity has met all applicable eligibility criteria in section 290.5 herein. The certificate shall specify the exact amount of the tax credit that a business entity may claim under the Program.

d. “Commissioner” shall mean the commissioner or acting commissioner of the Department of Economic Development.

e. "Department" shall mean the Department of Economic Development.

f. "Independently Owned" means a business entity that is not a publicly traded entity nor an entity of which more than five percent of the beneficial ownership is owned, directly or indirectly, by a publicly traded entity.

g. "Participant" means an applicant that has submitted a complete application and been approved by the Department to participate in the Program.

h. "Proof of expense" shall mean the applicant provided verification in a form and manner prescribed by the Department that a "Qualified COVID-19 capital cost" was incurred by the applicant between January 1, 2021 and December 31, 2022 and paid by the applicant on or before March 31, 2023; provided, however, that the commissioner, or her or his designee, may make the final determination of whether a document or combination of supporting documents submitted as verification meets the requirement of a proof of expense.

i. "Qualified COVID-19 capital costs" shall mean costs incurred from January 1, 2021 through December 31, 2022 at a business location in New York State to comply with public health or other emergency orders or regulations related to the COVID-19 pandemic, or to generally increase safety through infectious disease mitigation, including costs for: (i) supplies to disinfect and/or protect against COVID-19 transmission; (ii) restocking of perishable goods to replace those lost during the COVID-19 pandemic; (iii) physical barriers and sneeze guards; (iv) hand sanitizer stations; (v) respiratory devices such as air purifier systems installed at the business entity's location; (vi) signage related to the COVID-19 pandemic including, but not limited to, signage detailing vaccine and masking requirements, and social distancing; (vii) materials required to define and/or protect space such as barriers; (viii) materials needed to block off certain seats to allow for social distancing; (ix) certain point of sale payment equipment to allow for contactless payment; (x) equipment and/or materials and supplies for new product lines in response to the COVID-19 pandemic; (xi) software for online payment platforms to enable delivery or contactless purchases; (xii) building construction and retrofits to accommodate social distancing and installation of air purifying equipment but not for costs for non-COVID-19 pandemic related capital renovations or general "closed for renovations" upgrades; (xiii) machinery and equipment to accommodate contactless sales; (xiv) materials to accommodate increased outdoor activity such as heat lamps, outdoor lighting, and materials related to outdoor space expansions; and (xv) other costs as determined by the

Department provided, however, that "Qualified COVID-19 capital costs" do not include any cost incurred between January 1, 2021 and April 1, 2021 that were paid for with proceeds from the New York State COVID-19 Pandemic Small Business Recovery Grant Program.

Such Qualified COVID-19 capital costs must be paid for by the applicant prior to March 31, 2023. For purposes of this Part, "paid" shall mean that the vendor of any item or items indicated in subdivision i above has received payment for such item or items from the applicant. The Department shall require proof of expenses as further set forth in its application instructions.

j. "Small business" means one which is resident in this state, independently owned and operated, not dominant in its field and employs one hundred or fewer persons.

k. "Third-Party Reviewer" means a business that has been selected by the Department to assist in the review of applications and other tasks related to administration of the Program that the Department may deem necessary.

§ 290.3 Application and Review Process.

a. A business entity must complete a preliminary authorization form before submitting a full application. Upon receipt of a preliminary authorization form, the Department will verify with the Department of Taxation and Finance that the business entity does not owe past due state taxes or is complying with an approved binding payment agreement entered into with the Department of Taxation and Finance inclusive of having made such payments as may be required thereunder.

b. Upon verification that a business entity complies with the requirement in subdivision a above, the Department will notify the applicant and Third-Party Reviewer that the business entity is an authorized applicant.

c. An authorized applicant must submit a complete application as prescribed by the Department. Under no circumstances may a business entity submit more than one application to this Program. An application shall not be deemed approved unless the Third-Party Reviewer, in consultation with the Department where necessary, determines that the following criteria are met:

(1) the application is complete;

- (2) the applicant provided evidence of its business eligibility in a form and manner prescribed by the Department;
- (3) the applicant agreed to allow the Department of Taxation and Finance to share the applicant's tax information with the Department. However, any information shared as a result of this Program shall not be available for disclosure or inspection under the state freedom of information law;
- (4) the applicant agreed to allow the Department of Labor to share its tax and employer information with the Department. However, any information shared as a result of this Program shall not be available for disclosure or inspection under the state freedom of information law;
- (5) the applicant agreed to allow the Department and its agents access to any and all books and records the Department may require to monitor compliance;
- (6) the applicant certified, under penalty of perjury, that it is in substantial compliance with all emergency orders and public health regulations currently required of such entity and does not owe past due state taxes or local property taxes unless the business entity is making payments and complying with an approved binding payment agreement entered into with the taxing authority;
- (7) the applicant certified, under penalty of perjury, that no qualified COVID19 capital costs incurred between January 1, 2021 and April 1, 2021 were included in this Program if such costs were previously paid for with proceeds from the New York State COVID-19 Pandemic Small Business Recovery Grant Program; and
- (8) the applicant agreed to provide any additional information required by the Department relevant to the Program.

d. After reviewing an authorized applicant's completed application and determining that the applicant meets the eligibility criteria as set forth in section 290.5 of this Part, the Department may admit the applicant into the Program. If admitted, the applicant will be issued a certificate of tax credit. An applicant that does not meet the eligibility criteria set forth in section 290.5 of this Part shall not be admitted into the Program.

§ 290.4 Allocation of credits

a. For authorized applicants that are accepted into the Program, credits will be allocated based upon the date a completed application is submitted.

b. Authorized applicants will be notified by the Third Party Reviewer if an application is incomplete and will be provided five (5) business days to submit

additional information or documentation to complete their applications. If an applicant provides the requested additional information or documentation within five (5) business days such that the application is complete, the date the authorized applicant originally submitted its application shall be used for allocating credits. If an authorized applicant does not provide a complete application within five (5) business days of being notified, the date that the remainder of the requested information or documentation is submitted, such that the application is complete, will be used for allocating credits. The Third-Party Reviewer will notify the person identified in the application as the contact and such notification will be via email.

c. Provided further, the amount of credits allocated to an authorized applicant accepted into the Program will be based on the proof of expenses provided by the authorized applicant and verified by the Third-Party Reviewer. If the Third-Party Reviewer is unable to verify a qualified COVID-19 capital cost or costs based on proof of expense or expenses, the Third-Party Reviewer will notify the authorized applicant that additional proof of expense or expenses for the qualified COVID-19 capital cost or costs in question is needed. The applicant will be provided five (5) business days to supply the requested information. If an applicant does not provide the requested additional information within five (5) business days of being notified, the Third-Party Reviewer will disregard such qualified COVID-19 capital cost or costs when determining the amount of credits for which the applicant qualifies.

§ 290.5 Eligibility criteria.

a. To be eligible for a tax credit under the COVID-19 Capital Costs Tax Credit Program, an applicant must:

- (1) be a small business as defined in this Part and have two million five hundred thousand dollars (\$2,500,000) or less of gross receipts in the taxable year in New York State that includes December thirty-first, two thousand twenty-one;
- (2) operate a business location in New York State; and
- (3) have at least two thousand dollars (\$2,000) in Qualified COVID-19 capital costs.

b. A business entity must be in substantial compliance with any public health or other emergency orders or regulations related to the entity's business sector or other laws and regulations as determined by the Department. In addition, a business entity may not owe past due state taxes or local property taxes unless the business entity is making payments and complying with an approved binding payment agreement entered into with the taxing authority.

§ 290.6 COVID-19 Capital Costs Tax Credit

a. An applicant in the COVID-19 Capital Costs Tax Credit Program that meets the eligibility requirements of section 290.5 may be eligible to claim a credit equal to fifty percent (50%) of its Qualified COVID-19 capital costs as defined in subdivision (i) of section 290.2 herein.

b. A business entity, including a partnership, limited liability company and subchapter S corporation, may not receive in excess of twenty-five thousand dollars (\$25,000) in credits under this Program; and shall not receive a credit less than one thousand dollars (\$1,000) provided proof of expenses of at least two thousand dollars (\$2,000) are accepted pursuant to subdivision c of section 290.4.

c. A business entity may claim the tax credit in the taxable year that includes the date the certificate of tax credit was issued by the Department pursuant to subdivision d of section 290.3.

§ 290.7 Retention of records.

a. Each participant in the Program shall keep all relevant records for their duration of Program participation for at least three years from the date the tax credit is issued.

§ 290.8 Reporting.

a. Each participant in this Program must submit a performance report to the Department by March 31, 2023. For the purposes of this requirement, the completed application and the proof of expenses submitted by a participant shall be considered a performance report.

b. The commissioner shall, on or before April 1, 2023 and every quarter thereafter until Program funds are fully expended, submit a report to the governor, the temporary president of the senate, the speaker of the assembly, the chair of the senate finance committee, and the chair of the assembly ways and means committee, setting forth the activities undertaken by the Program. Such report shall include, but not necessarily be limited to, the following in each reporting period to the extent such information is available: total number of participants approved and the economic development region in which the business is located; total amount of payments disbursed (e.g. tax credits issued) and tax credits claimed, and average amount of payments disbursed (e.g. tax credits issued) and tax credits claimed; names of recipients and tax credits claimed; and such other information as the commissioner determines necessary and appropriate to effectuate the purpose of the Program. Such reports shall, at the same time, be included on the Department's website and any other publicly accessible database that lists economic development programs as determined by the Department.

§ 290.9 Removal from Program

a. The commissioner shall remove a participant from the Program for failing to meet any of the requirements set forth in section 290.3 herein, or for failing to meet the requirements set forth in section 290.5 herein.

b. If the commissioner has removed a participant from the Program pursuant to subdivision (a) of this section, the commissioner shall notify such participant of such removal in writing. Such notice of removal shall explain the reason or reasons for the removal from the Program.

§ 290.10 Cap on the tax credit

a. The total amount of tax credits listed on certificates of tax credit issued by the commissioner pursuant to this article may not exceed two hundred fifty million (\$250,000,000) dollars.